

# Order

**Michigan Supreme Court  
Lansing, Michigan**

November 15, 2005

Clifford W. Taylor,  
Chief Justice

ADM File No. 2004-54

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
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Justices

Amendments of  
Rules 5.144, 5.203, 5.207,  
5.302, 5.307, 5.404, and  
5.409 of the Michigan  
Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 5.144, 5.203, 5.207, 5.302, 5.307, 5.404, and 5.409 of the Michigan Court Rules are adopted, effective immediately.

## Rule 5.144 Administratively Closed File

(A) Administrative Closing. The court may administratively close a file

- (1) for failure to file a notice of continuing administration as provided by MCL 700.3951(3) or
- (2) for other reasons as provided by MCR 5.203(D) or, after notice and hearing, upon a finding of good cause.

In a conservatorship, the court may administratively close a file only when there are insufficient assets in the estate to employ a successor or special fiduciary, or after notice and hearing upon a finding of good cause. If the court administratively closes the conservatorship, the court shall provide notice to the state court administrative office of the closure.

(B) [Unchanged.]

### Rule 5.203 Follow-Up Procedures

Except in the instance of a personal representative who fails to timely comply with the requirements of MCL 700.3951(1), if it appears to the court that the fiduciary is not properly administering the estate, the court shall proceed as follows:

(A)-(C) [Unchanged.]

(D) Suspension of Fiduciary, Appointment of Special Fiduciary. If the fiduciary fails to perform the duties required within the time allowed, the court may do any of the following: suspend the powers of the dilatory fiduciary, appoint a special fiduciary, and close the estate administration. If the court suspends the powers of the dilatory fiduciary or closes the estate administration, the court must notify the dilatory fiduciary, the attorney of record for the dilatory fiduciary, the sureties on any bond of the dilatory fiduciary that has been filed, any financial institution listed on the most recent inventory or account where the fiduciary has deposited funds, any currently serving guardian ad litem, and the interested persons at their addresses shown in the court file. This rule does not preclude contempt proceedings as provided by law.

(E) [Unchanged.]

### Rule 5.207 Sale of Real Estate

(A) Petition. Any petition to approve the sale of real estate must contain the following:

- (1) the terms and purpose of the sale,
- (2) the legal description of the property, ~~and~~
- (3) the financial condition of the estate before the sale-, and
- (4) an appended copy of the most recent assessor statement showing the state equalized value of the property. If the court is not satisfied that the evidence provides the fair market value, a written appraisal may be ordered.

(B) [Unchanged.]

### Rule 5.302 Commencement of Decedent Estates

(A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for

a formal testacy proceeding. When filing either an application or petition to commence a decedent estate, a copy of the death certificate must be attached. If the death certificate is not available, the petitioner may provide alternative documentation of the decedent's death. Requiring additional documentation, such as information about the proposed personal representative, is prohibited.

(B)-(D) [Unchanged.]

#### Rule 5.307 Requirements Applicable to all Decedent Estates

(A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must submit to the court the information necessary for computation of the probate inventory fee. In calculating the inventory fee, deductions shall be allowed for secured loans on property listed on the inventory, but no other deductions shall be allowed. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

(B)-(D) [Unchanged.]

#### Rule 5.404 Guardianship of Minor

(A) Petition for Guardianship of Minor. If the court requires the petitioner to file a social history before hearing a petition for guardianship of a minor, it shall do so on a form approved by the state court administrative office. The social history for minor guardianship is confidential, and it is not to be released, except on order of the court, to the parties or the attorneys for the parties.

~~(A)-(E)~~ [Relettered (B)-(F), but otherwise unchanged.]

#### Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators

(A) [Unchanged.]

(B) Inventories.

(1) [Unchanged.]

(2) Filing and Service. Within 56 days after appointment, a conservator or, if ordered to do so, a guardian shall file with the court a verified inventory of the estate of the protected person, serve copies on the persons required by

law or court rule to be served, and file proof of service with the court. Property the protected person owns jointly or in common with others must be listed on the inventory along with the type of ownership.

(C) Accounts.

- (1) Filing, Service. A conservator must file an annual account unless ordered not to by the court. A guardian must file an annual account if ordered by the court. The account must be served on interested persons, and proof of service must be filed with the court. The copy of the account served on interested persons must include a notice that any objections to the account should be filed with the court and noticed for hearing. When required, an accounting must be filed within 56 days after the end of the accounting period.

(2)-(3)[Unchanged.]

- (4) Exception, Conservatorship of Minor. Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. If the assets are ordered to be placed in a restricted account, proof of the restricted account must be filed with the court within 14 days of the conservator's qualification or as otherwise ordered by the court. The conservator must file with the court an annual verification of funds on deposit with a copy of the corresponding financial institution statement attached.
- (5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. A copy of the corresponding financial institution statement for all liquid assets, dated within 30 days of the end of the accounting period, must be presented to the court to verify assets on hand at the end of the accounting period, unless waived by the court for good cause.
- (6) Periodic Review. The court shall either review or allow accounts annually, unless no account is required under MCR 5.409(C)(1) or (C)(4). Accounts shall be set for hearing to determine whether they will be allowed at least once every three years. ~~Unless accounts have been allowed, the court shall review the accounts no less often than once every three years.~~

(D)-(F) [Unchanged.]

Staff Comment: The amendments of MCR 5.144, 5.203, 5.207, 5.302, 5.307, 5.404, and 5.409, effective immediately, were developed as a result of the state court administrative office's statewide conservatorship case review prompted by the Performance Audit of Selected Probate Court Conservatorship Cases by the Michigan Office of the Auditor General and the State Bar of Michigan Probate and Estate Planning Section's Uniformity of Practice Committee's survey of probate court practices. The amendment of MCR 5.144(A)(2) eliminates the ability to close a conservatorship estate because of suspension of a fiduciary unless there are insufficient funds available to hire a special fiduciary, or after notice and hearing and a finding of good cause. The amendment of MCR 5.203(D) adds the financial institution and guardian ad litem to the list required to receive notice when a fiduciary is suspended. The amendment of MCR 5.207(A) allows for better court oversight when real property is sold. The amendment of MCR 5.302(A) requires that a copy of a death certificate be attached to the petition or application when commencing a decedent estate. In the event that the death certificate is not available, the petitioner may provide alternative documentation. The amendment of MCR 5.307(A) allows for the deduction of secured loans when calculating the inventory fee due. The amendment of MCR 5.404(A) creates a new subsection that requires the use of a SCAO approved social history form when one is required to be filed with a petition for guardianship of a minor. The amendment of MCR 5.409(B)(2) requires that joint property belonging to the protected person be listed on the inventory along with the type of ownership. The amendment of MCR 5.409(C)(1) clarifies that the fiduciary must serve the account on the interested persons and file the proof of service with the court. The amendment of MCR 5.409(C)(4) provides the process for filing a proof of restricted account and annual verification of funds on deposit with the court. The amendment of MCR 5.409(C)(5) adds the requirement to present a financial institution statement to the court when filing the annual account. The amendment of MCR 5.409(C)(6) requires the court to either review or allow the account annually and to hold a hearing on the accounts at least once every three years.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 15, 2005

*Corbin R. Davis*  
Clerk